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MAILED

JUL 15 2010

OFFICE OF PETITIONS

In re Patent No. 5,673,190
Issue Date: September 30, 1997
Application No. 08/408,563
Filed: March 22, 1995
Patentee(s): Curtis O. Kahleck, et. al.

ON PETITION

This is a decision on the petition under 37 CFR 1.378(c), filed on May 24, 2010, to accept the delayed payment of a maintenance fee for the above-identified patent.

The petition is **DISMISSED**.

A petition to accept the unintentionally delayed payment of a maintenance fee under 35 U.S.C. § 41(c) and 37 CFR 1.378(c) must be accompanied by: (1) a statement that the delay was unintentional; (2) payment of the appropriate maintenance fee, unless previously submitted; (3) payment of the surcharge set forth in 37 CFR 1.20(i)(2). This petition lack items (1) and (2) above.

With respect to item (1) above, the statement of unintentional delay is not considered to be submitted by a proper party as required by 37 CFR 1.378(d), which states that any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest.

In this regard, the petition is signed by one of three inventors. An unsigned paper or one not properly signed by a person having authority to prosecute an application or patent is not entered. This applies, for instance, where a petition (or other paper) is signed by only one of three applicants and the one signing has not been given a power of attorney by the other.

Therefore, as the petition was not signed by all the inventors and the record herein fails to disclose that Steven D. Riedel was ever given a power of attorney to act on behalf of the other joint inventors, or that Mr. Riedel is an assignee of the entire interest and has

complied with the provisions of 37 CFR 3.73(b)¹, the petition filed May 24, 2010 is considered not to contain a proper statement of unintentional delay.

With respect to item (2), a review of the record shows that the above patent expired on September 30, 2007 for failure to pay the 11 ½ year small entity maintenance fee. In response, the present petition, along with \$490 for payment of the maintenance fee and \$1,640 for the surcharge were submitted on May 24, 2010. However, the proper maintenance fee required for an 11 ½ year small entity maintenance fee is \$2,055. Therefore, the balance of \$1,565 need to be submitted before reinstatement can occur.

Additionally, petitioner will not receive future correspondence, which may be mailed, regarding maintenance fees for the above-identified patent, unless a "Fee Address Indication" form and/or a "Request for Customer Number" form(s) is submitted (See USPTO forms PTO/SB/47 and/or PTO/SB/125).

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within **TWO (2) MONTHS** from the mail date of this decision. No extension of this two-month time limit can be granted under 37 CFR 1.136(a) or (b). This is not a final agency action within the meaning of 5 U.S.C. § 704.

Any petition for reconsideration of this decision must be accompanied by the petition fee of \$400 as set forth in 37 CFR 1.17(f). The petition for reconsideration must include the lacking item(s) noted above, since, after a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Commissioner.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
 Commissioner for Patents
 Post Office Box 1450
 Alexandria, VA 22313-1450

By hand: U.S. Patent and Trademark Office
 Customer Service Window, Mail Stop Petitions
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

¹37 CFR 3.73(b) provides that: (1) when an assignee seeks to take action in a matter before the Office, the assignee must establish its ownership of the property to the satisfaction of the Commissioner; (2) ownership is established by submitting to the Office, in the Office file related to the matter in which action is sought to be taken, documentary evidence of a chain of title from the original owner to the assignee (e.g., copy of an executed assignment submitted for recording) or by specifying (e.g., reel and frame number) where such evidence is recorded in the Office; (3) the submission establishing ownership must be signed by a party authorized to act on behalf of the assignee; and (4) documents submitted to establish ownership may be required to be recorded as a condition to permitting the assignee to take action in a matter pending before the Office.

A courtesy copy of this decision is being mailed to the address given in the present petition. Thereafter, all future correspondence will be mailed solely to the address of record until properly notified by applicant.

If petitioner does not wish to pursue reinstatement of this expired patent, petitioner may request a refund of the maintenance fee and surcharge totaling \$2,130, which was submitted with the present petition. The request should be made in writing and addressed to: Mail Stop 16, Director of the U.S. Patent and Trademark Office, P. O. Box 1450, Alexandria, VA 22313-1450. A copy of this decision should accompany petitioner's request.

Telephone inquiries should be directed to the undersigned at (571) 272-3226.

ASmith
Andrea Smith
Petitions Examiner
Office of Petitions

cc: Steven D. Riedel
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